

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TED W. MONTGOMERY and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

*Docket No. 01-784; Submitted on the Record;
Issued December 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a 5 percent impairment for the right upper extremity and a 6 percent impairment for the left upper extremity, for which he received a schedule award.

On September 14, 1998 appellant, a 45-year-old letter carrier, filed an occupational disease claim alleging that his carpal tunnel syndrome was due to factors of his federal employment. The Office of Workers' Compensation Programs accepted the claim for bilateral carpal tunnel syndrome and authorized carpal tunnel release surgery on both wrists.

On June 12, 2000 the Office referred appellant to Dr. Kevin D. Komes, Board-certified in physical medicine and rehabilitation, to provide an opinion concerning appellant's entitlement to a schedule award.

In a report dated July 7, 2000, Dr. Komes stated that appellant's range of motion for right wrist extension was 55 degrees which yielded a 1 percent impairment,¹ flexion of 65 degrees yielded a 0 percent impairment,² radial deviation of 30 degrees yielded a 0 percent impairment³ and ulnar deviation of 40 degrees yielded a 0 percent impairment.⁴ Regarding right strength, active movement against gravity with full resistance yielded a 0 percent impairment,⁵ maximum impairment due to motor deficit of the median nerve deficit was 10 percent impairment for a 0

¹ A.M.A., *Guides*, (4th ed. 1993) at 36, Figure 26.

² *Id.*

³ *Id.* at 38, Figure 29.

⁴ *Id.*

⁵ *Id.* at 49, Table 12 at 54, Table 15.

percent impairment based on loss of strength.⁶ Regarding right sensation, decreased sensibility with or without abnormal sensation or pain, forgotten during activity, yielded a 10 percent impairment,⁷ and the maximum medical nerve sensory deficit was 38 percent. He then multiplied 38 percent times 10 percent for a 4 percent impairment of the right upper extremity. Dr. Komes then combined 1 percent for range of motion deficit with 4 percent for sensory deficit for an impairment rating of 5 percent for the right upper extremity.

Regarding appellant's left wrist, range of motion extension of 50 degrees yielded a 2 percent impairment,⁸ flexion of 70 degrees yielded a 0 percent impairment,⁹ radial deviation of 20 degrees yielded a 0 percent impairment¹⁰ and ulnar deviation of 60 degrees yielded a 0 percent impairment.¹¹ Regarding left strength, active movement against gravity with full resistance yielded a 0 percent impairment,¹² maximum impairment due to motor deficit of the median nerve was 10 percent impairment for a 0 percent impairment based on loss of strength.¹³ Regarding left sensation, decreased sensibility with or without abnormal sensation or pain, forgotten during activity, yielded a 10 percent deficit,¹⁴ maximum median nerve sensory deficit was 38 percent.¹⁵ He then multiplied 38 percent times 10 percent for a 4 percent impairment of the left wrist. Dr. Komes then combined 2 percent for range of motion deficit with 4 percent for sensory deficit for an impairment rating of 6 percent for the left upper extremity. The physician found no vascular abnormalities in either extremity. Dr. Komes stated that the date of maximum medical improvement was June 9, 1999.

On July 26, 2000 the Office medical adviser reviewed Dr. Komes' report and found that the rating was correct and based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He recommended that the Office accept this impairment rating for appellant's right and left upper extremities.

By decision dated November 20, 2000, the Office awarded appellant a schedule award based on a 5 percent impairment of the right upper extremity and 6 percent based on impairment of the left upper extremity.

⁶ *Id.*

⁷ *Id.* at 48, Table 11 at 54, Table 15.

⁸ *Id.* at 36, Figure 26.

⁹ *Id.*

¹⁰ *Id.* at 38, Figure 29.

¹¹ *Id.*

¹² *Id.* at 49, Table 12 at 54, Table 15.

¹³ *Id.*

¹⁴ *Id.* at 48, Table 11 at 54, Table 15.

¹⁵ *Id.*

The Board finds that appellant has no greater than a five percent permanent impairment of his right upper extremity and a six percent permanent impairment of his left upper extremity, for which he has received a schedule award.

A claimant seeking compensation under the Federal Employees' Compensation Act¹⁶ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.¹⁷ Under section 8107 of the Act¹⁸ and section 10.404 of the implementing federal regulations,¹⁹ schedule awards are payable for the permanent impairment of specified body members, functions or organs.²⁰ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.²¹

In the instant case, Dr. Komes, in a detailed report based on a complete and accurate factual and medical history, properly applied and utilized the A.M.A., *Guides* and determined that appellant, based upon his examination and testing results, had a five percent permanent impairment of his right upper extremity and a six percent permanent impairment of his left upper extremity, causally related to his accepted employment-related conditions. Thereafter, an Office medical adviser reviewed Dr. Komes' report and conclusions and agreed with Dr. Komes' impairment determinations.

As no other probative medical evidence was submitted to the record which supported any greater degree of permanent impairment, appellant has not established his entitlement to any greater schedule award.

¹⁶ 5 U.S.C. § 8101, *et seq.*

¹⁷ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

¹⁸ *Supra* note 16, 5 U.S.C. § 8107.

¹⁹ 20 C.F.R. § 10.404 (April 1, 1999).

²⁰ 5 U.S.C. § 8107(a). It is thus the claimant's burden of establishing that she sustained a permanent impairment of a scheduled member or function as a result of his employment injury; *see Raymond E. Gwynn*, 35 ECAB 247 (1983) (addressing schedule awards for members of the body that sustained an employment-related permanent impairment); *Philip N.G. Barr*, 33 ECAB 948 (1982) (indicating that the Act provides that a schedule award be payable for a permanent impairment resulting from an employment injury).

²¹ *A. George Lampo*, 48 ECAB 441 (1994).

Accordingly, the November 30, 2000 of the Office of Workers' Compensation Programs is hereby affirmed.²²

Dated, Washington, DC
December 4, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

²² The Board notes that this case record contains evidence which was submitted subsequent to the Office's November 30, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).